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ABSTRACT

An ethnographic study explored to what extent Trial Practice facilitates interpersonal skill development. Subjects, nine third-year law students enrolled at a large midwestern university law school, were observed over the course of a semester. Data collection included personal observations, informal interviews, fieldnotes, tape-recordings of teacher-student conferences, a questionnaire, and a researcher's journal. Results indicated that Trial Practice has a direct impact on changing student views of law school curriculum, on reformulating students' definitions of the skills needed to become a competent lawyer, and on facilitating students' introspective views of their own learning processes. Findings suggest that legal education should place more emphasis on interpersonal skill development by focusing instruction on training law students not only to "think like lawyers" but also to "feel like lawyers." (RS)

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Student Lawyers on Trial: An Ethnographic Study of a Trial Practice Class

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ABSTRACT

The purpose of this ethnographic study was to explore to what extent Trial Practice facilitates interpersonal skill development. It was conducted during one semester at a large midwestern university law school and involved a total of nine third-year law students and one practicing attorney. Data-collection included personal observations, informal interviews, fieldnotes, tape-recordings of teacher-student conferences, a questionnaire, and a researcher's journal. Trial Practice was found to have a direct impact on changing student views of law school curriculum, on reformulating students' definitions of the skills needed to become a competent lawyer, and on facilitating students' introspective views of their own learning processes. This study suggests that legal education place more emphasis on interpersonal skill development by focusing instruction on not only training law students to "think like lawyers", but also "feel like lawyers" as well.

Legal education effectively trains students to think rationally, logically, and analytically. It is questionable, however, whether it effectively trains students in "basic working skills"; that is, to write, communicate orally, interview, interrogate, counsel, and negotiate (1). As a result, critics charge that legal education involves learning an overwhelming body of legal knowledge, but few skills for dealing with real human problems (2).

In response, many law schools have implemented such curricular reforms as small-group learning, clinical education, simulation learning, and skills and experience-based instruction in an attempt to facilitate interpersonal skill development (3).

Little ethnographic research, however, has been conducted to determine to what extent these reforms have been successful. Boland conducted an ethnographic study of a "Guardian Ad Litem" clinical class and found that law students considered the clinical opportunity to be very beneficial as it offered them the chance to engage in a genuine professional experience as well as helpful in broadening their perspectives (4).

Phillips conducted an ethnographic study designed to observe how law students are socialized into the legal profession. She found that students survive in law school provided they not only learn the legal language, but also use this "cant" in their interactions with teachers and classmates (5).

Elkins conducted a qualitative study by asking his students to keep

journals while in law school. He was concerned with the hypothesis that there may be a human cost in becoming a lawyer. After reviewing student jounals, he concluded there was. Students expressed a growing dissatisfaction and frustration with both the routine of law school and its overemphasis on teaching substantive legal knowledge. More specifically, students expressed concern over their inabilities to relate to real people problems (6).

The ethnographic study reported here was conducted to explore to what extent Trail Practice facilitates interpersonal skill development. Trial Practice was selected because of its deemphasis on strictly inculcating substantive legal principles and its emphasis on simulation learning where students study fictional cases, represent fictional clients, and participate in trial simulations.

METHOD

This study was conducted during one semester at a large midwestern university law school and involved a total of 9 third-year law students and one instructor. The instructor was a practicing attorney employed by a local major law firm and by the law school as an adjunct professor.

Multiple sources of data collection were employed for triangulation purposes. These sources included personal observations, informal interviews, fieldnotes, tape-recordings of teacher-student conferences, a student questionnaire, and the maintenance of a researcher's personal journal.

DATA ANALYSIS

All data was subjected to qualitative data-analysis procedures (7). Based on an analysis of the data, four patterns related to interpersonal skill development were found: 1) course expectations, 2) attitudes and behaviors, 3) classroom environment, and 4) learning processes.

COURSE EXPECTATIONS

Course expectations were shaped by the love first-hate later relationship students developed with legal education. Based on the first two years, law school was viewed as unnecessarily restrictive, compromising, and stressful. Those years dulled student enthusiasm, desire, and a willingness to diligently study and achieve. As a result, third year was a time of little excitement, motivation, or seriousness about coursework. In fact, student feelings bordered dangerously on apathy and often despair.

> During third year, you are coasting on your classes. In fact, you are not even studying anymore. You simply don't do as much as the first two years.

To cope, students expected third year to be a time "to coast" and take "easy" courses. Any courses reputed to involve demanding workloads and difficult examinations were avoided since those would be "just more of the same

thing we've already had."

Yet, ironically, coasting did not mean being idle or lethargic. On the contrary, it meant that students during third year spent more time preparing for after graduation careers than they did studying for before graduation classes.

> Third year first semester you spend so much time sending out letters and resumes. It is a wonder you get through your classes while trying to find a job. That's all people think about is whether they have a job or not. Nobody is really giving their school work 100%. Some people think our school work is the only thing we should be considering, but the way the system is set up, no way. The only time you give your schoolwork 100% is your first year.

Trial Practice was expected to be an "easy, fun, and practical class." The word fun was not used in the context that the course would be entertaining, but in the sense that it would be a welcomed break from the norm.

In addition, the word practical meant different things to different students. For example, one student expected practical to mean that the class would function as a refresher course for the deluge of substantive law covered during the first two years. Another student expected the course to offer her experiences where she could learn and demonstrate a variety of practical lawyering skills. Still others expected practical to mean that the course would replicate situations they would later encounter "out in the real world".

Students also expected a particular teaching style. They expected

instruction to be more practitioner and skill-oriented and less lecture and test-oriented. In fact, students candidly remarked that they would not have enrolled in Trial Practice if a faculty member was teaching the class. They wanted a practitioner because students felt practitioners possessed highly refined interpersonal skills.

> I chose this course because a practitioner is teaching it. Practitioners are very skilled people. I would choose them over law professors because law professors are always in the classroom. I would prefer someone who is out there litigating and doing trial work everyday to teach me what trial work is really all about. I don't want a professor to teach me law, I want a practitioner to teach me and to show me how to apply the law.

Course perceptions, however, began to change as students participated in trial simulations. Trial Practice was still considered "fun", but students became increasingly uncomfortable with the type of fun they were having.

They began to realize that Trial Practice required much more of them than just knowledge of legal principles. It required them to convincingly deliver cross-examinations and closing arguments as well as participate in sensitive client conferences, activities which were much more difficult than they had originally expected. Trial simulations dramatically exposed a lack of interpersonal skills prompting many students to generate critical self-appraisals of their trail performances. These self-appraisals resulted in students placing themselves more on trial rather than their fictional clients.

> Participating in these simulations convinced me that our fictional clients were not the ones really on trial. It was we students who were really on trial. I mean you are doing something that you have never done before, ever. So the Trial Practice class is really a trial of yourself. You go in there and see what you can do and what you can't do. There are apron strings to hang on to anymore and that's pretty scary.

One student criticized herself for her lack of ability to cope successfully with both the legal issues and the interpersonal dynamics occurring at the same time. She remarked that never before had she realized that how to say something in a court proceding was just as important as what to say.

ATTITUDES AND BEHAVIORS

Consequently, students experienced a fundamental change in their perception of what it means to be a competent lawyer. Before Trial Practice, thinking like a lawyer was prized because it afforded them, 1) membership in an established profession, 2) an esteemed and valued role in society, and 3) a sense of power as a result of possessing specialized knowledge. Students took great pride in that fact that they operated as efficient "thinking machines."

But after participating in trial simulations, students began to conclude

that merely possessing the ability to think like lawyers was insufficient. In fact, they felt that defining competent lawyering solely as thinking like a lawyer hampered both intrapersonal and interpersonal skill development.

For example, students began to redefine a competent lawyer as a person who can deal simultaneously with both complex legal issues and the complex needs of clients. They did not want to restrict their lawyering roles merely to thinking machines. Rather, they wanted lawyering to also be a humanistic profession where lawyers demonstrate not only legal competence but also client understanding and empathy. Students felt they needed interpersonal skills in order to effectively communicate with clients as well as intrapersonal skills in order to feel good about themselves.

Several students alluded to the dangers of strictly thinking like lawyers.

> Basically law school gets down to thinking like a lawyer and it never stops. At some point you have to divorce yourself from it and I think that that may be a problem with law school in that you are thinking like a lawyer too much. Lawyers never learn how to think any other way.

Students were also apprehensive about the adverse intrapersonal effects always thinking like a lawyer could cause. One student, for instance, suggested that only being trained to think like a lawyer had a negative effect on her sense of self-confidence while another student was concerned about how lawyers would be accepted in the world if they continued to perpetuate this analysis-without-feeling image.

> In order to function as tolerable human beings outside of law school, we are going to have to temper this attitude of always analyzing everything. But I think a lot of lawyers can't. They can't forget their arrogance of analyzing and feeling like they have a better grip on everything. Then they go out and can't relate to other people. God, I hope it never happens to me.

Classroom Environment

Students value feedback because it not only contributes to positive and constructive classroom environments but also facilitates student achievement. In Trial Practice, however, students felt that teacher feedback was ineffective because it was neither student-centered nor task-specific.

One student, for example, felt that teacher feedback actually inhibited student participation.

> I don't feel like we are really giving each other help. The whole thing is like the power of the class is with the teacher. But it seems that feedback should come from all of us instead of just the teacher. It's kind of like he is all the feedback we get. Maybe if we had a chance to voice what we think, it would give more of a sense of everyone participating. As it is, we just stay quiet and listen.

Another student indicated that the course in general and the feedback in particular was too teacher-centered.

> Yeah, feedback is normally like, 'Good job', but not really direct, constructive or in depth like, 'Hey, you know I thought this point and this point was really good, but I was really uncertain about why you got into that.' All feedback is too general and, unfortunately, coming from only one source, the teacher.

Others felt that teacher feedback tended to cover too much and thus only served to provide a cursory rather than a specific evaluation of her trial performance.

> I don't get much from the feedback. It's like I didn't get enough of what I wanted and expected. Covering as many things as he does, you know, like the content, the delivery, I walk out of class usually wondering what I really did get. I end up being really confused about what I could do better.

Students felt that the main danger involved in cursory rather than task-specific feedback was the increased likelihood that they would repeat their errors. In their view, it was essential that feedback should indicate specifically what they did right and what they did wrong.

As an alternative, students suggested that participation and achievement would increase if Trial Practice facilitated a classroom environment whereby constructive feedback was provided by both teachers and students. They envisioned classrooms more as thought collectives consisting of a community of learners where students and teachers learn from each other.

> There can be a more comfortable environment to give each other feedback, both good and bad. Students can be a part of every other student's development. They can be more of a participant both in their own and in each other's learning process.

Students also felt that peer feedback would facilitate an environment where students could help each other cooperatively build important interpersonal skills.

> I just think students are a normal group of people who can say, 'Hey, I liked the way you did that, even though that technique didn't work for me.' It is a sort of process where you kind of help each other build skills. This class is an opportunity for skill-building. I think that kind of skill-building can be done in a more cooperative fashion.

LEARNING PROCESSES

Students identified 3 major interpersonal skill areas which they felt were critical for competent lawyering: 1) listening skills, 2) control over nervousness and fear, and 3) control over power.

Students considered the development of two simultaneous listening ears as a critical interpersonal skill. One ear was to be an "objecting ear", always alert and ready to obect to inappropriate testimony and procedural issues: the other was to be a "listening ear, equally alert and continually revising legal

strategy. They indicated that intuitively they were already aware of the need for this skill, but Trial Practice convinced them that it was still unrefined.

The need to control their own nervousness was also deemed important. Nervousness in general was a result of their unfamiliarity with trial situations and as such prompted one student to admit that, although she appeared self-confident during the trial, she was really only acting. In fact, her past experiences working as a law clerk dictated that the ability to act was an important and popular defense mechanism used by even the most skilled lawyers.

> Lawyers seem self-confident. But they are just people. And people are also actors. Lawyers don't want to show the jury they are nervous. I personally was very nervous in the first five minutes of my trial and I think it showed.

Still another student indicated that his nervousness actually bordered on fear.

> My nervousness is more like fear. It seems like I can do a great job, think really well on my feet, do everything I need to do, but then when I get nervous, everything leaves me. I was so afraid of that happening going into the trial that I kept saying to myself that it doesn't matter, but it did.

And finally, students remarked that Trial Practice dramatically exposed their inability and vulnerability to control the power a lawyer is privileged to possess. This power is more than just privleged access to and command of

special knowledge. It's power that directly affects people's lives.

Although students struggled with this newfound sense of power, the ultimate struggle they faced was not with how they wielded it aganist a witness, a jury, or even a judge, but how they wielded it aganist each other.

When this sense of shared power was actually used aganist them, students tended to react more as if it constituted a personal attack. One student, for instance, during a pre-trial session, reacted defensively to comments opposing counselors made to her regarding some disputed procedural issue. She later admitted that at that time she felt her classmates were attacking her personally rather than objectively arguing legal matters. After much reflection, however, she later speculated that her inability to cope with power used against her was directly related to her own lack of self-confidence.

Ironically, in the end, students experienced that possessing and using power can be a very humbling experience. The power that could make them strong could also make them vulnerable and weak.

DISCUSSION

Spending one semester observing and interviewing students in Trial Practice reminded me of Epictetus who once said that, "Men are not disturbed by events, but by the view they take of them." Trial Practice had indeed been a valuable experience, not because it had been a unique "event", but primarily

because it had facilitated different student "views" of curriculum, of lawyering, and of learning, views that ironically were refreshing and stimulating and at the same time frustrating and humbling.

After participating in trial simulations, students observed that, in retrospect, legal education seemed too teacher-centered and cognitive-based. For three years, they were unnecessarily fed a steady diet of the "I lecture, You listen, I Question, You Answer, I Test" classroom format.

It appears they need a more balanced diet. That is, a more student-centered and cognitive/affective-based curriculum, one in which the focus is on training students to not only think like lawyers, in the sense that thinking connotates being rational, logical, and analytical, but also to feel like lawyers, in the sense that feeling connotates being communicative, empathetic, and humanistic. This diet must be based on the assumption that "affect and cognition are not independent processes; nor are they processes that can be separated. They interpenetrate just as mass and weight do. They are part of the same reality in human experience" (8).

Trial Practice also helped students identify their needs for becoming a competent lawyer. Foremost in their minds, of course, was the need to know the law. But they also need opportunities early on to develop interpersonal skills in order to deal simuataneously with both legal needs and people needs and intrapersonal skills in order to feel comfortable with themselves. Thus developing a positive self-image and a sense of self-confidence was critical. Students felt that trying to maintain the strict image of a "thinking machine" was doomed because that image couldn't sustain itself throughout a professional

legal career, and therefore invited dissatisfaction and even burnout probabilities.

Students did, however, pay a price in Trial Practice. Participating in simulations was discomforting and sometimes humbling to their self-image. They entered possessing a strong ego, secure and confident in their knowledge of legal principles. Trial Practice, however, dramatically exposed how fragile those egos really were. Although secure in knowing the law, they experienced a sense of insecurity and lack of confidence in applying the law.

For example, students demonstrated a lack of fluency while delivering cross-examinations, opening, and closing arguments. These demonstrations were often characterized by poor voice tone, incorrect grammar, redundancy, excessive pausing, distractive gesturing, and convoluted thinking. In the end, students admitted that their egos had been bruised because their positive private image as a competent lawyer had clashed with their disappointing public performance. These egos would heal as students became more aware of and adept at using interpersonal skills in trial settings. Until that time, however, students relied on their best defense mechanism; that is, to "fake it", to act.

Lastly, in Trial Practice, students discovered much about their own learning processes. First, they discovered that making errors can be a constructive, not destructive, process provided the learning environment facilitates risk-taking and encourages students to assume active, participant roles rather than passive, listening roles so pervasive in legal education.

Second, they also discovered the power of social learning in the form of

peer feedback. Initially peer feedback was very difficult for some students to provide. All trial simulations were conducted in front of peers who acted as jurists, witnesses, and various court personnel. Students, therefore, felt doubly pressured because they were constantly being evaluated by both the instructor and their peers. As a result, students' nurtured competitive instincts were counter productive. They became so obsessed with outperforming their peers that they completely lost sight of how successfully or unsuccessfully they were representing their clients. Thus, trial simulations functioned as combat zones where individual students fought for the sake of self-esteem rather than as a court of law where competent lawyers fought for the sake of their clients.

However, primarily because teacher feedback was neither student-centered nor task-specific, students gradually relied more and more on informal peer feedback for direct and constructive evaluations of their trial performances.

Therefore, in the final analysis, legal education may be the wiser to realize, as the students did in this study, that, by definition, interpersonal skill development occurs between persons and that it ultimately is not an individual endeavor, but rather a social endeavor where people interact in specific legal contexts and then socially and meaningfully construct what it means for each of them to become what Manning calls an "excellent first class lawyer" (9).

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